


[PPP Home](#) | [Contact Us](#)

PPP Legislation

[PPPs Defined](#) >

[PPP Options](#) >

[PPP Legislation](#) >

[SEP-15 Program](#) >

[PPP Case Studies](#) >

[PPP Agreements](#) >

[Links](#) >

[Resources](#) >

[Events Calendar](#) >

[Glossary](#) >

ANALYSIS FOR STATE OF VIRGINIA

[« back](#)**Statute:**

VA. CODE ANN. §§ 56-556 to 56-575

Summary:

Virginia's Public-Private Transportation Act of 1995 authorizes PPPs and was modified during the 2005 legislative session. Allows solicited and unsolicited proposals. Contains detailed guidelines to assist VDOT and other public entities in implementing this program.

Key Elements of Virginia's PPP Enabling Legislation

Last Updated: September 2005

No.	Issue:	Short Answer:	Sample Provision:
1.	Does the relevant law allow solicited and unsolicited proposals for PPP projects?	Yes.	§56-560 A (unsolicited) and B (solicited).
2.	Does the relevant law permit local/state/federal funds to be combined with private sector funds on a PPP project?	Yes.	Under §56-566 C, the public entity may make grants or loans of amounts received from the federal government. Under §56-566 D, the comprehensive agreement may provide for the loan of public funds.
3.	Who has rate-setting authority to impose user fees and under what circumstances may they be changed or otherwise reviewed?	Private entity.	§56-565 A grants the private entity the ability to impose user fees. Under §56-566 A.8. -B, the comprehensive agreement may provide for reasonable maximum rate of return on investment.
4.	Does the relevant law permit TIFIA loans to be used on PPP projects?	Yes.	Under §56-567, a public entity can enter into contracts to receive federal assistance for a project.
5.	Is the number of PPP projects limited to only a few "pilot" or "demonstration" projects?	No.	
6.	Are there restrictions concerning the geographic location of PPP projects?	No.	
7.	Are there restrictions concerning the particular mode of transportation eligible to be developed as a PPP project (e. g., truck, passenger auto, freight rail, passenger rail)?	No.	The §56-557 definition of a "Transportation facility" is very broad.
8.	Is there a legal requirement to remove tolls after the repayment of project debt?	No.	

9.	Does the relevant law permit the conversion of existing or partially constructed highways into toll roads?	Yes.	See §56-565 A. A recent amendment deleted the prior restriction.
10.	Is there a restriction that prevents the revenues from PPP projects from being diverted to the state's general fund or for other unrelated uses?	No.	§56-566E. A PPP agreement may provide that excess earnings be distributed to the Commonwealth's transportation trust fund, to the responsible public entity, or shared with appropriate public entities.
11.	Is prior legislative approval required when an individual PPP proposal is received?	No.	
12.	Are there any similar requirements that subject the PPP proposal or the negotiated PPP agreement to a local veto?	No.	See §56-563. Notice must be given to affected jurisdictions, which must indicate whether the facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.
13.	Does the relevant law permit all kinds of procurements for PPP project delivery? These might include, for example, calls for projects, competitive RFQ and RFPs, qualifications review followed by an evaluation of proposer concepts, use of design build, procurements based on financial terms such as return on equity rather than on price, long-term asset leases for some period of up to 60 years or longer from the time operations commence?	Yes.	See §§ 56-560 D and 56-573.1. See also VDOT Guidelines.
14.	Are there explicit exemptions/ supplemental procurement authority from the application of the state's general procurement laws?	Yes.	§56-573.1.
15.	Does the relevant law authorize the public sector to grant long-term leases/franchises for the construction, operation and maintenance of toll facilities?	Yes.	§56-565 B.
16.	Does the public sector have the authority to issue toll revenue bonds or notes?	No express provision in the PPTA law.	
17.	Does the public sector have the authority to form nonprofits and let them issue debt on behalf of a public agency?	Yes.	No specific provision; this authority is a matter of general law.
18.	Does the relevant public agency have the authority to hire its own technical and legal consultants?	Yes.	
19.	Does the relevant law permit the public sector to make payments to unsuccessful bidders for work product contained in their proposals?	No express provision.	

20.	Can the agency charge application fees to offset its proposal review costs?	Yes for unsolicited; no for solicited.	Under §56-560 D, the relevant public entity may charge a fee for its review of unsolicited proposals, including the fees of attorneys and financial advisors. Under §56-560 B, however, no such fee may be charged for its review of solicited proposals.
21.	Does the relevant law allow adequate time for the preparation, submission and evaluation of competitive proposals? Note that the agency should have the authority to establish these deadlines on a case-by-case basis depending on the complexity and scope of the initial proposal or other factors that might promote competition (e.g., more review time during holiday periods).	Yes.	Contained in VDOT Guidelines, not statute. Allows 45 days, or such additional time as designated by the Secretary.
22.	Is the public sector required to maintain comparable non-toll routes when it establishes new toll roads?	No.	
23.	Are there any non-compete clause prohibitions?	No.	
24.	Is the authority to enter into PPPs restricted to the state DOT or state turnpike authority or may regional or local entities also do so?	No restriction.	§56-557 defines "responsible public entity" as any public entity, including local governments and regional authorities that have the power to develop and/or operate the qualifying transportation facility.
25.	Does the relevant law specify evaluation criteria for PPP proposals received under a given procurement approach?	In VDOT Guidelines.	§56-573.1 suggests certain criteria, others are detailed in VDOT's Guidelines.
26.	Does the relevant law specify the structure and participants for the review process involving PPP proposals?	No.	§56-560 D requires each public entity to establish a specific schedule of review in its own guidelines. Otherwise, they are as specified in VDOT's Guidelines.
27.	Does the relevant law protect the confidentiality of PPP proposals and any related negotiations in the period prior to execution of the PPP agreement?	Yes.	See §56-560 G and VDOT's Guidelines.
28.	Does the relevant law provide for the ability of the public sector to outsource long-term operations and maintenance and other asset management duties to the private sector?	Yes/No.	§56-573.3-4 requires asset management contracts to be subject to competitive bid procurement unless they are part of the comprehensive agreement for original construction or reconstruction.

[back to top](#)

PPPS Defined | PPP Options | PPP Legislation | SEP-15 Program | PPP Case Studies | Links | Resources
Events Calendar | Contact Us | Glossary

[FHWA Home](#) | [Feedback](#)

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